THE BRECHNER REPORT

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# U.S. Senate approves legislation to amend FOIA

WASHINGTON – The U.S. Senate unanimously approved a bill sponsored by Sen. John Cornyn, R-Texas, and Sen. Patrick Leahy, D-Vt., that is designed to strengthen the federal Freedom of Information Act.

FREEDOM OF INFORMATION

The bill, titled the Openness Promotes Effectiveness in our National Government Act of 2005, requires any future FOIA exemptions to be stated explicitly in the text of the legislation.

If passed by the House of Representatives, this would be the first time Congress has approved major reforms to FOIA in nearly a decade.

The Electronic Freedom of Information Act amendments, also sponsored by Leahy, became law in 1996.

In addition to the OPEN Government Act, the two senators have also co-sponsored legislation seeking to establish an advisory commission that would examine processing delays in FOIA requests.

The text of the bill is available online at thomas.loc.gov by searching for S. 394.

# Inquiry begins into actions by school board

CRYSTAL RIVER – Officials at the Academy of Environmental Science are being investigated for possible violations of the state's Sunshine Laws, according to Chief Assistant State Attorney Ric Ridgway.

The probe began after the charter school's former director Lisa Merritt filed a complaint alleging that board chairman Bob Gill and board member Chris Lloyd exchanged e-mails this April in violation of the state's Open Meetings Law.

ACCESS MEETINGS

Two or more members of an elected or appointed public board are required to conduct all business in public, including telephone calls and e-mails.

Former board chairman Gary Maidhof acknowledged that he had warned board members that e-mails regarding topics likely to come before the board would violate the Sunshine Law.

Gill and Lloyd have publicly apologized for the e-mail exchange.

Both board members have declined to comment on the pending investigation being conducted by the State Attorney's Office.

# Appeals court reverses trial court's decision to seal records in murder

SARASOTA – Judges in the 2nd District Court of Appeal ruled that a judge erred when he sealed records in the case against accused killer Joseph P. Smith.

ACCESS RECORDS

Circuit Judge Andrew Owens closed FBI reports, witness statements and other investigative documents filed in the 2004 killing of 11-year-old Carlie Brucia.

He said that unsealing them would be an "unnecessary annoyance and embarrassment" to witnesses who have had medical or drug problems.

The Times Publishing Company, on behalf of the *St. Petersburg Times*, sought access to the sealed records.

The appellate court found no legal basis for the closure of the documents and ordered more than 1,200 pages be unsealed.

# Miami builder files suit against city for discussing construction project

MIAMI BEACH – A local developer sued the mayor and members of the Miami Beach City Commission over a condominium construction project, alleging violations of the Sunshine Law.

Developer Mickey Biss contends that city officials have repeatedly violated the state's Sunshine Law by secretly discussing the condo project he has been trying for years to construct.

Biss alleges that several members of the commission were at a February meeting to discuss the issue.

In addition, he claims that several members of the commission met with Commissioner Saul Gross' firm, Streamline Properties, which has also been involved in the issue.

Biss filed suit because he said no public notice was provided for these meetings.

Florida law requires that meetings between two or more members of an elected or appointed body be open to the public and properly noticed.

City officials assert that the Sunshine Law was not violated because the February meeting was a community forum and not a commission meeting or workshop.

# Court records panel delays release of final report

TALLAHASSEE – The state panel charged with developing policies for online access to court records didn't offer its final recommendations to the Florida Supreme Court on July 1, as planned. Instead, the Committee on Court Records and Privacy requested an extension so it could meet one last time. The final report is due Aug. 15.

The committee adopted several recommendations outlined in its draft report at a June 22 meeting in Orlando. The group recommends a general policy of electronic access to court records, but not until several privacy safeguards are implemented. Concerns of identity theft and privacy prompted the panel's recommendation of large-scale screening and redaction processes. It also proposes that filers notify clerks of any documents containing confidential information or face the possibility of court sanctions.

The moratorium on Internet court records imposed two years ago will not, by the panel's own admission, end soon. In the meantime, a proposed interim policy would restrict the electronic release of court records primarily to cases designated as having "significant public interest," cases in which a public agency is a party and based on individual record requests.

*-Christina Locke*

# No charge filed against local administrator

MIAMI – The Broward State Attorney's Office will not prosecute Southwest Ranches Town Administrator John Canada for refusing to release records related to his pay.

Residents complained to the State Attorney's Office in April after Canada refused to turn over public records of the town employees' salaries.

Florida law makes the salaries of public officials public record. However, Canada claimed he was exempt from this provision because he did not work directly for the town but was instead paid by his company, which is employed by the town.

Assistant State Attorney Bernhard Hollar said that because Canada had believed he was exempt from the law's requirements, it would be difficult to convict him.

Canada eventually disclosed his $114,400 salary to the public in May.

## DECISIONS ON FILE

*Copies of case opinions, Florida Attorney General opinions, or legislation reported in any issue as "on file" may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.*

# Florida Supreme Court discusses stricter rules for cameras in court

ACCESS COURTS

TALLAHASSEE – Privacy rights of trial participants could trump the media's access to courts, if the Florida Supreme Court accepts proposed changes to its rules regulating cameras in the courtroom.

Under the current rule, judges have the power to regulate cameras in their courtrooms in order to maintain decorum and ensure a fair trial.

A Florida Bar committee of judges wants privacy rights and preventing the disclosure of confidential information added to that list.

The proposed changes also would give judges discretion to prohibit photographing jurors' faces and allow court security cameras to be used for security purposes only and not, for example, to broadcast proceedings on the World Wide Web.

Media attorneys filing on behalf of media outlets across the state argue that the changes go against case law and Florida's tradition of open courtrooms.

The court held oral arguments on the matter June 9. No date has been set for a final ruling on the matter.

*-Christina Locke*

## CENSORSHIP

# 7th Circuit applies *Hazelwood* case to college newspaper in Illinois

CHICAGO – School-funded college newspapers can be edited by university administrators if the newspaper is not a designated public forum, according to a recent ruling by the U.S. Court of Appeals for the 7th Circuit in *Hosty v. Carter*.

The 7-4 decision expands the scope of *Hazelwood v. Kuhlmeier*, a 1988 U.S. Supreme Court ruling that allows high school administrators to censor student newspapers based on legitimate pedagogical reasons.

The 7th Circuit ruling conflicts with rulings by the First and Sixth Circuits, which have held that *Hazelwood* has little to no applicability to college newspapers.

Writing for the majority, Judge Frank Easterbrook said the newspaper at Governors State University, a public school in Illinois, is a limited-purpose public forum, which allows for more restraints on press freedoms.

The students in the case, who were members of the newspaper staff, have released statements saying they plan to appeal the 7th Circuit decision to the U.S. Supreme Court.

# War contractor redacts hundreds of documents

WASHINGTON – Government officials testified before Congress, saying that little information is available on how millions of dollars has been spent by the U.S.-led Development Fund for Iraq.

This testimony comes despite the program's initial promises of transparency in spending while it was authorized by the United Nations to oversee and administer Iraq's oil revenues and food and reconstruction aid.

The hearing came as a result of an investigation by Stuart Bowen Jr., a special inspector general, who determined non-disclosure and fraud were prevalent in the program's efforts.

A congressional investigation revealed that Halliburton, the largest single recipient of Development Fund monies, redacted 483 items from its accounting documents and overcharged for its oil services in Iraq by more than $200 million.

Department of Defense officials testified that they will be more aggressive about oversight of the spending in light of the investigation's findings that contractors were overcharging.

## FIRST AMENDMENT

# Officials interrogate journalist reporting on OAS meeting

FORT LAUDERDALE – Journalist Lyng-Hou Ramirez of Grupo de Diarios America was detained for about an hour by Secret Service agents and more than a dozen local law enforcement officials while reporting on a meeting of the Organization of American States earlier this summer.

Since the incident, Ramirez has filed a complaint with OAS, alleging that she was not informed of the reason for her detention.

During the time period, officials questioned her regarding her professional credentials.

They also inquired about her immigration status after she revealed to them that she was originally from Venezuela.

She contends that officials mocked her for not carrying a green card and because she was unable to tell them the exact date that she became a legal resident of the United States.

Law enforcement officials eventually allowed Ramirez to leave. However, the officials retained her press credentials and informed her that she would have to obtain replacements.

She is the content director for Grupo de Diarios America, a Miami-based media outlet.

The news organization compiles information from 11 newspapers in Latin America.

A spokesman said OAS plans to contact local law enforcement about Ramirez's treatment.

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Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
http://www.brechner.org
e-mail: brechnerreport@jou.ufl.edu

**Sandra F. Chance, J.D., Exec. Director/Exec. Editor**
**Amy Kristin Sanders, Editor**
**Alana Kolifrath, Production Coordinator**
**Christina Locke, Production Assistant**

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## COURTS

# TV reporter faces trial for trespass

MIAMI – A federal judge ruled that an Inside Edition reporter can stand trial for trespass but not for wiretapping or fraud charges.

Judge James Cohn relied in part on the 1999 *Food Lion* decision by the U.S. Court of Appeals for the 4th Circuit to decide that Matthew Yule could be held accountable for trespassing when he misrepresented his qualifications to gain a job as a sales agent for a door-to-door magazine company in Coral Springs.

## ACCESS RECORDS

# Records lawsuit could determine new precedent

WEEKI WACHEE – The City of Weeki Wachee and Weeki Wachee Springs, a limited-liability company, continue to fight a court's order to release public documents. The parties attended a rehearing earlier this summer.

In February, Circuit Court Judge Richard Tombrink Jr. upheld an order compelling the two entities to release seven items to the Times Publishing Company, which owns Brooksville's *Hernando Times.*

The requested items include Weeki Watchee's budget for the past three years as well as the city's expenses and revenues for the 2001-2002 fiscal years.

Joe Mason, an attorney for the defendants, argues that the city and company have released all the requested documents that are currently in their possession.

"We have given the *Times* everything they requested," he said.

However, the dispute arises over records in possession of the park's previous owner Jeffrey Farrar, who now resides in Rhode Island.

At this point, it is unclear whether the city or Weeki Wachee Springs will be required to litigate in order to obtain records from Farrar.

"I will concede that it is an unsettled area of law whether you have to go to Rhode Island," Tombrink said. "Ultimately, litigation is a business decision. You'll have to decide how much justice you will afford."

# California resolution supports federal shield law

***Editor's Note:*** *This resolution was drafted by the California First Amendment Coalition in light of the jailing of* New York Times *reporter Judith Miller.*

*Peter Scheer*

Across the land, freedom of the press—that is, the freedom of American citizens, through the press, to be kept informed about the affairs of government—is under assault. The threat comes not from the left or the right, from the Administration or Congress, but from federal judges, prosecutors and litigants who no longer feel constrained by law, ethics or policy from demanding that journalists disclose their confidential sources.

It is estimated that during the past year more than 70 journalists and news organizations have been involved in disputes with prosecutors and litigants in federal court over access to unpublished, confidential information. Dozens have received subpoenas demanding records or testimony; one journalist, Jim Taricani, a television reporter in Rhode Island, has already served a sentence for refusing to identify an anonymous source; and at least nine journalists have been held in contempt and currently face the threat of imminent incarceration or heavy fines (or both), including *New York Times* reporter Judith Miller, who was ordered jailed in July. (*Time* magazine reporter Matthew Cooper, explaining that his source had expressly relieved him of his secrecy obligation, announced that he would cooperate with the Special Counsel.)

The threat against the press is not new in American history. During British colonial rule, writer John Peter Zenger refused to reveal his sources while serving a sentence for "libeling" the governor of New York, and Benjamin Franklin declined to name the confidential sources for stories appearing in his brother's newspaper in Philadelphia. What is new is the pervasiveness and intensity of the threat. We have moved from a climate in which federal courts were, under a variety of legal theories, protective of reporters' confidential sources, to a climate in which a wave of federal court subpoenas now places the independence of the press in jeopardy.

The Back Page

***By Peter Scheer***

At stake is the American people's right to know about the uses and misuses of power in high places. If journalists cannot promise confidentiality to a source—and have that source believe that his/her identity will never be revealed—the public will lose news reports of the greatest importance and consequence for public policy. These include reporting on corporate malfeasance, national security and government corruption—all subjects for which confidential sources are not merely desirable, but indispensable. The best example in contemporary history is the reporting by *Washington Post* reporters Bob Woodward and Carl Bernstein that uncovered the Watergate scandals. The secrecy surrounding their most valuable confidential source, FBI official Mark Felt (aka "Deep Throat"), lasted more than 30 years and was lifted only recently by Felt himself.

The judicial threat is almost uniquely federal. Forty-nine states and the District of Columbia, through legislation or court decision, have adopted "shield laws" providing an evidentiary privilege for reporters—much like the privileges enjoyed by clergy, lawyers and psychotherapists—to keep secret information given them in confidence. Although some federal judicial circuits also recognize such a privilege, most do not, and the Supreme Court's recent decision not to review a crucial contempt ruling against reporters Miller and Cooper leaves no room for hope that the federal courts will, on their own, end the assault on press freedom.

Accordingly, we look to Congress for action on this urgent matter. Congress now has before it several bills to establish a reporter's evidentiary privilege in federal proceedings. We urge members of California's Congressional delegation, Democrats and Republicans alike, to come together and support the most promising of these bills. The issue is no longer whether a federal "shield law" is needed; the issue, rather, is how soon it can be enacted. Freedom of speech, upon which all our freedoms depend, hangs in the balance.

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*Peter Scheer is the executive director of the California First Amendment Coalition. He has worked as an editor and publisher of legal publications as well as practiced law.*